DETAILED ACTION

1. Applicant's request for reconsideration of the restriction by original presentation has been considered, the previous Office action is vacated and the new final office action is presented below.

Election/Restrictions

2. Newly submitted claims 37 and 39-41 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 39 and 40 are distinct from the originally filed and elected invention (claims 16, 22, and 24-27) as subcombination having vibration plates with singular type of *peripheral intermittent* welding, and the combination of vibration plates having two distinct welded features, the intermittent welding along the periphery and *additionally* the newly presented welding feature of plug welding of a plurality of holes (although only one hole is shown in figure 12) which has not be consideration or claimed previously. Furthermore, claims 37 and 41 present a new species of the invention based on the shape of the cut-out, requiring an election to be made.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 16, 22, 24-28, 34-36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2002-48188 in view of Halter 4,045,057. Claims 16 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 2002-48188. JP '188 shows a vibration damping device for damping vibrations of a machine (the excavator) comprising a laminated plate (123) formed by laminating a specified number of inner plates and an outer plate (911) that is disposed on an outside of the specified number of the inner plates (fig 7), characterized in that wherein the specified number of inner plates are tightly sealed by the outer plate and a machine that is an object of vibration damping. Although, JP '188 does disclose in the abstract that the laminated sheets maybe attached by either bolt joint or welding (also see figures 7a-e & 16a-b), JP ,188 does not specifically show intermittent welding consisting of welding in a plurality of locations is further performed on the peripheral edges of the inner plates when the laminated plate is coupled to members of the machine; however, Halter shows a similar device for use of damping vibrations where inners layers of plates 7/8 are welded 10a/11a at their peripheries intermittently (fig 2-3) so vibration damping properties are maintained as a form of connection for inner plates. Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify JP '188, as taught by Halter, for the expected result and benefit derived from the use of a known equivalent form of welding inner plates, intermittently along the periphery, that maintains and preserves the vibration damping properties of the layers while having a strong connection by means of intermittent periphery welding.

As concerns claim 22, the combination shows the laminated plate (123) is formed by laminating a specified number of inner plates and an outer plate which is disposed on the outside of the specified number of inner plates (JP '188, fig 7) whose peripheral edge has a shape that partially differs from those of the peripheral edges of the inner plates, the inner plates are caused to contact with members of the machine that is the object of vibration damping, and the laminated plate is coupled to the members of the machine by performing continuous welding on peripheral edges of the outer plate, a notoriously well known attachment method as demonstrated by Halter.

As concerns claims 24 and 34-35, the combination shows the member of the machine has a contact member that is capable of contacting end portions of the laminated plate the inner plate has a contact part that protrudes from a peripheral edge of the outer plate and contacts with the contact member, and continuous welding that covers the contact part of the inner plate is performed between the peripheral edge of the outer plate and the contact member (JP '188, see figures 1-13).

As concerns claim 25, the combination shows a plurality of protruding parts (JP '188, fig 7) that match a peripheral edge shape of the outer plate (JP '188, 132) are disposed on the peripheral edge of the inner plate, and the plurality of protruding parts

of the inner plate are intermittently welded by performing continuous welding on the peripheral edge of the outer plate.

As concerns claims 26-27, the combination does not show a length of the contact part of the inner plate is 100 to 280 mm; however, it would have been an obvious matter of design choice to modify the combination to include the ranges of since applicant has not disclosed that these ranges solve any particular problem or purpose and it appears other similar ranges would work equally well. Furthermore, routine experimentation would lead one of ordinary skill in the art to these ranges.

As concerns claims 36 and 38, the combination shows the contact part is demarcated by a cut-out part (dark solid black rectangles), and the cut-out part has a rectangular shape (see figure 16a-b of JP '188) and the cut-out part is embedded by welding and the inner plates are attached to the machine when the laminated plate is coupled to the members of the machine (abstract).

Response to Arguments

4. Applicant's arguments filed 02/21/08 have been fully considered but they are not persuasive (since the after final amendment, filed 08/29/08, was not entered). Examiner has cited Halter as a reference having a clear teaching of the known practice of intermittently welding inner plates to maintain vibration damping properties.

5. In response to applicant's argument that the ranges of dimension denote patentability are not persuasive since small incremental differences are both created by machining and furthermore would not change the properties of the device. Applicant's

example is relative to the size in which this example is not persuasive since other numbers could be used to support the opposite conclusion.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is

571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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